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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,142	06/01/2001	Wesley H. Verkaart	70869-0072	9169

7590  
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11/25/2003

EXAMINER

HAYES, MICHAEL J

ART UNIT PAPER NUMBER

3763

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

09/857,142

Applicant(s)

VERKAART, WESLEY H.

Examiner

Michael J Hayes

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-10 is/are allowed.
- 6) ☒ Claim(s) 1, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/17/03 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by LEE (U. S. Patent No. 5,115,816). Lee discloses an apparatus for holding and operating a syringe comprising a handle transverse to a semi-cylindrical resilient cradle 65 that holds the syringe barrel and an adapter 72.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cordner. Cordner (figs. 1, 3-5), discloses an apparatus for holding one or more syringes including a handle 14 extending transversely to a semi-cylindrical cradle, a clip 80 with spaced front and rear walls for accommodating syringes of different length. The arrangement between the handle and the cradle such that a user's thumb is capable of engaging the syringe plunger.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over FUKUNAGA or WOLF in view of LEE. Fukunaga (figs. 1, 2, 4, 6, 8) and Wolf (figs. 1-5) disclose an apparatus for holding one or more syringes including a handle, cradle, and a clip adapted to engage two plungers for simultaneous movement. The clip can accommodate different lengths because of the gap between the front and rear walls allows at least this variation in length between syringes. Various thickness of the plunger flanges of the different syringes allows for different lengths to fit within the gap of the clip. Neither Fukunaga or Wolf disclose a handle to be gripped that extends transversely to the cradle that removably receives the barrel. Lee discloses a handle to be gripped that extends transversely to a cradle that removably receives a barrel of a syringe to enable the user to operate the syringe with one hand (figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Lee in the apparatus of Fukunaga or Wolf in order to deliver the contents of the syringe assembly with one hand, enabling a secure grip on the syringe.

***Allowable Subject Matter***

Claims 2-4, 6-10 are allowed. The claims are allowed because they recite an apparatus for holding and operating syringes comprising a handle and transverse cradle that holds a syringe

barrel and a clip that is capable of engaging the plunger ends of two syringes to connect them for simultaneous movement where the handle has a storage cavity for at least one clip.

***Response to Arguments***

With regards to Applicant's arguments concerning claim 1, the examiner does not agree that the "consisting essentially of" language distinguishes over the prior art because this language applies only to the handle. Elements 90 and 85 are not part of the handle 55, but rather of the device. The handle of the prior art consists essentially of the same elements as claimed by Applicant.

Applicant argues that a user's thumb could not engage the plunger in the device of Cordner. The examiner disagrees and refers Applicant to fig. 2 which shows that the arrangement of the elements would allow a user's thumb to engage (touch) the plunger.

Applicant's arguments concerning the use of the prior art device to withdraw fluids are not relevant. Applicant does not claim a specific use for his device; furthermore, a new use for an old device does not carry patentable weight.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler, can be contacted at (703) 308-3552. The fax number for submitting official papers is (703) 872-9306.

mjh  
19 November 2003



**MICHAEL J. HAYES  
PRIMARY EXAMINER**